

NATURAL RESOURCE DAMAGE CLAIM CONSENT DECREE

SUMMARY

In 1983, the U.S. Environmental Protection Agency (EPA) and the State of Utah began to investigate the past and present mining operations on property owned by Kennecott Utah Copper Corporation (Kennecott). In 1986, the State of Utah filed a Natural Resource Damage Claim under CERCLA (Comprehensive Environmental Response, Compensation, and Liability Act) against Kennecott for damages to the ground water in the Southwest Jordan Valley. An initial settlement was reached, but it was rejected as insufficient by the Federal District Court.

In 1995, a settlement agreement was reached between three parties: the State of Utah, Kennecott, and the Salt Lake Water Conservancy District (now the Jordan Valley Water Conservancy District - JWCD). The Natural Resource Damage Consent Decree (Consent Decree) outlining the terms of the settlement was approved and entered with the U.S. District Court on August 21, 1995.

Under the Consent Decree, Kennecott was required to:

- Conduct and complete a Remedial Investigation/Feasibility Study (RI/FS) under the Superfund process,
- Drill a well or wells into the acid plume to begin the extraction of contaminants,
- Complete additional source control measures within 24 months, described as the completion of the Eastside Collection System and the Bingham Creek Cutoff System,
- Pay the State \$9 million cash to be placed in a Trust Fund to be used to “restore, replace, or acquire the equivalent of the surface or ground water resource for the benefit of the public in the Affected Area,” and
- Provide to the State a \$28 million Irrevocable Letter of Credit (ILC) to be used as part of the Trust Fund. Kennecott could receive a credit against this ILC by extracting, treating, and providing municipal quality water through a purveyor to the public in the Affected Area, for a period of 40 years.

As specified in the Consent Decree, interest earned on the monies in the Trust Fund remains as part of the Trust Fund.

STATUS

The RI/FS has been completed and the Record of Decision for this site was signed on December 13, 2000.

Kennecott completed the well and is extracting contaminated water from the low pH (acidic) plume.

The reconstruction of the Large Bingham Reservoir was completed in stages; the last stage to be completed was the construction of Zone 2 in 1995. Construction of the Bingham Creek Cutoff Wall source control measure was completed in 1995. Construction of the Eastside Collection System source control measures, which included the water transfer pipes and the cutoff walls in the other drainages along the eastern front of the Oquirrh Mountains, was completed in 1996. All source control measures are regulated under a Utah ground water discharge permit.

No funds have yet been expended from the Trust Fund to “restore, replace, or acquire the equivalent lost resource.” The cash settlement portion of the Trust Fund is valued at approximately \$13.2 million as of January 2004. The ILC portion of the Trust Fund is valued at \$48.1 million as of August 2003. A proposal for extracting, treating, and providing municipal quality drinking water from the sulfate plume has been provided to the Trustee for approval.

A public comment period on the above mentioned proposal was held from September 2, 2003 to November 21, 2003. The proposal and public comments are being reviewed by the Trustee.

During the public comment period, a number of people made requests that the communication loop with the public be strengthened. With that in mind, our outreach will now include:

- Stakeholder Forum Meetings

On a regular basis, JWCD, Kennecott and DEQ representatives will sit down with representatives of various community groups to provide project updates and discuss proposals under consideration as well as ongoing work of the Technical Review Committee (TRC). This Forum will be in addition to formal public comment periods, which will remain an important part of the overall process.

- E-mail Updates

Periodic project updates will be e-mailed to those interested. If you would like to included, please e-mail your contact information to deqinfo@utah.gov

- Continued Online Access to Information:

We will continue to post project related information on the DEQ website at <http://www.deq.utah.gov/issues/nrd/index.htm>

For further information, please contact Doug Bacon, Project Manager, at (801) 536-4282.